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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,601	04/06/2001	Steven L. Eikenberg	WRAIR 00-05 16	5690

27370 7590 09/30/2009
OFFICE OF THE STAFF JUDGE ADVOCATE
U.S. ARMY MEDICAL RESEARCH AND MATERIEL COMMAND
ATTN: MCMR-JA (MS. ELIZABETH ARWINE)
504 SCOTT STREET
FORT DETRICK, MD 21702-5012

EXAMINER

WILSON, JOHN J

ART UNIT	PAPER NUMBER
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3732

MAIL DATE	DELIVERY MODE
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09/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/828,601	Applicant(s) EIKENBERG, STEVEN L.	
	Examiner John J. Wilson	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Bailey et al (5013240). Bailey teaches a portable dental treatment system, Fig. 9, including a bracket table 127 including a surface shown at 183 in Fig. 10 and a plurality of dental handpiece holders 196, a dental drill 129 and a dental rinse instrument 132 located in the holder, a portable base unit 111, Fig. 7, having a power source 142 in communication 137 with the drill, a water reservoir 146 in communication with the rinse instrument as shown, at least one suspension device 184, 185, Fig. 10, couplable, it is couplable because it shows as being coupled, between the bracket table and the base, and as shown in Fig. 10, the bracket table is extendable out past the side of the base. It is held that this table is capable of extending over a patient's chair, at least to some degree, and therefore, meets the functional claim language. With respect to the limitation of the bracket table also comprising a tray, it is held that the shown flat portion at 183 of Fig. 10 is inherently capable of holding items, and therefore, is capable of functioning as a tray thereby properly meeting the claim language. As to claim 30, see foot pedal 135. As to claim 31, see air holding tank 144. As to claim 32, see compressor 33. As to claim 33, see suction pump 70.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al (5013240) in view of Slouka (3597033). Bailey shows a portable dental treatment system configured to be compacted and bundled such that a relatively fit person can physically carry that includes a portable base unit 111, Fig. 7, column 6, lines 33-35, including a suction pump 70. As to claim 2, to call 146 of Brent a bracket tray is merely terminology to the skilled artisan. As to claim 3, Bailey shows a compressor 33, Fig. 5. As to claims 7, 8 and 10, see rotatable connections shown by Slouka. As to claims 18-21, the method steps are an obvious use of the shown structure. As to claim 27, see waste water bottle 146 of Bailey. As to claim 28, see clean water bottle 145 of Bailey.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al (5013240) in view of Slouka (3597033) and Hoffmeister et al (4445859). Bailey shows the structure as described above, however, Bailey does not show a suspension device including a curved member. Slouka teaches a couplable bracket table 26 and suspension device 25 couplable to a base of a movable dental treatment system 12. It would be obvious to one of ordinary skill in the art to modify Bailey to include a portable bracket table and suspension device as shown by Slouka in order to better service a patient at the patient's location by more

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conveniently holding dental tools, the combination being an obvious known manner of using the elements to obtain a predictable result. The above combination does not show a device comprising a curved member. Hoffmeister teaches a dental treatment system comprising at least one device having a curved member 54. It is held to be an obvious matter of choice to one of ordinary skill in the art as to the shape of the member as in Hoffmeister to serve as a suspension device for the table. The specific shape of the member is not critical to the claimed invention, since the applicant contemplates other configurations.

Drawings

The drawings submitted May 4, 2004 are objected to by the examiner because the photographs of the claimed invention are capable of illustration by other medium such as ink drawings, see 37 CFR 1.84(b). Furthermore, the photographs are insufficient in quality that the details of the claimed structure are difficult to discern and would not be reproducible in the printed patent. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance. When preparing new drawings in compliance with the requirement therefor, care must be exercised to avoid" introduction of anything which could be construed to be new matter prohibited by 35 U.S.C. 132 and 37 CFR 1.121.

Response to Arguments

Applicant's arguments filed August 11, 2009 have been fully considered but they are not persuasive. Applicant argues that the prior art does not show a portable dental system having a tray holding tools over a patient. An article claim is properly met if structure is shown that is capable of functioning as claimed, it is not necessary that the prior art show the intended function. It is held that Bailey meets all the claim limitations as described above. With respect to claim 34, it is noted that the suspension device is only inferentially claimed, "couplable", with the base and table bracket. The prior art shows devices that are couplable.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 571-272-4722. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez, can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

***/John J Wilson/
Primary Examiner
Art Unit 3732***

jw
September 26, 2009